

## **POLICY AND PROCEDURE PERTAINING TO DATA PRIVACY**

### **PURPOSE**

The purpose of this policy is to establish guidelines that promote service recipients rights ensuring data privacy rights record confidentiality of resident.

### **POLICY**

Gleseners Assisted Living recognizes the right of each person receiving services in this program to confidentiality and data privacy. This policy provides general guidelines and principles for safeguarding service recipient rights to data privacy under Health Insurance Portability and Accountability Act (HIPAA) Standards of Privacy and access to their records under section [144.292](#), subdivision 1-7 of the Assisted Living Laws.

### **PROCEDURE**

#### **I. Private Data**

- A. Private data includes all information on persons that has been gathered by this program or from other sources for program purposes as contained in an individual data file, including their presence and status in this program.
- B. Data is private if it is about individuals and is classified as private by state or federal law. Only the following persons are permitted access to private data:
  1. The individual who is the subject of the data or a legal representative.
  2. Anyone to whom the individual gives signed consent to view the data.
  3. Employees of the welfare system whose work assignments reasonably require access to the data. This includes staff persons in this program.
  4. Anyone the law says can view the data.
  5. Data collected within the welfare system about individuals are considered welfare data. Welfare data is private data on individuals; including medical and/or health data. Agencies in the welfare system include, but are not limited to: Department of Human Services (DHS); local social services agencies, including a person's case manager; county welfare agencies; human services boards; the Office of Ombudsman for Mental Health and Developmental Disabilities; and persons and entities under contract with any of the above agencies; this includes Gleseners Assisted Living, and Eon Inc. Home Care and other licensed caregivers jointly providing services to the same person
  6. Once informed consent has been obtained from the person or the legal representative there is no prohibition against sharing welfare data with other persons or entities within the welfare system for the purposes of planning, developing, coordinating and implementing needed services.
  7. DHS and Department of Health have legal access to the person's information without a signed release.
- C. Data created prior to the death of a person retains the same legal classification (public, private, confidential) after the person's death that it had before the death.
- D. Providing Notice

1. At the time of service initiation, the person and his/her legal representative, if any, will be notified of this program's data privacy policy. Staff will document that this information was provided to the individual and/or their legal representative in the individual record.
- E. Obtaining Informed Consent or Authorization for Release of Information
1. At the time, informed consent is being obtained staff must tell the person or the legal representative individual the following:
    - a. Why the data is being collected;
    - b. How the facility intends to use the information;
    - c. Whether the individual may refuse or is legally required to furnish the information;
    - d. What known consequences may result from either providing or refusing to disclose the information; and with whom the collecting facility is authorized by law to share the data. What the individual can do if they believe the information is incorrect or incomplete;
    - e. How the individual can see and get copies of the data collected about them; and any other rights that the individual may have regarding the specific type of information collected.
- F. A proper Authorization for Release of Information Form must include these factors (unless otherwise prescribed by the Health Insurance Portability and Accountability Act (HIPAA) Standards of Privacy of Individually Identifiable Health Information [45 C.F.R. section 164](#)):
1. Be written in plain language;
  2. Be dated;
  3. Designate the particular agencies or person(s) who will get the information;
  4. Specify the information which will be released;
  5. Indicate whether there is a specific individual or organization that should NOT receive health related information.
  6. Describe the method for the resident/representative to revoke the Authorization for Release of Information at any time. I may stop this consent with a written notice at any time, but this written notice will not affect information Gleseners Assisted Living, and Eon Inc. Home Care has already released.
  7. Specify the purposes for which the information will be used.
- G. Maintain all informed consent documents in the consumer's individual record.
- H. Staff Access to Private Data
1. This policy applies to all program staff, volunteers, and persons or agencies under contract with this program (paid or unpaid).
  2. Staff persons do not automatically have access to private data about the persons served by this program or about other staff or facility personnel. Staff persons must have a specific work function need for the information. Private data about persons are available only to those program employees whose work assignments reasonably require access to the data; or who are authorized by law to have access to the data.
  3. Any written or verbal exchanges about a person's private information by staff with other staff or any other persons will be done in such a way as to preserve confidentiality, protect data privacy, and respect the dignity of the person whose private data is being shared.
  4. As a general rule, doubts about the correctness of sharing information should be referred to the supervisor.

- I. Individual Access to Private Data: Residents have the rights specified in this section regarding the treatment the resident receives and the resident's health record.
- Resident access:  
Upon request, a provider shall supply to a resident within 30 calendar days of receiving a written request for medical records complete and current information possessed by that provider concerning any diagnosis, treatment, and prognosis of the resident in terms and language the resident can reasonably be expected to understand.
  - Additional resident rights:  
A resident's right specified in this section and sections [144.293](#) to [144.298](#) are in addition to the rights specified in sections [144.651](#) and [144.652](#) and any other provision of law relating to the access of a resident to the resident's health records.
  - Notice of rights; information on release:  
A provider shall provide to residents, in a clear and conspicuous manner, a written notice concerning practices and rights with respect to access to health records. The notice must include an explanation of:
    1. disclosures of health records that may be made without the written consent of the resident, including the type of records and to whom the records may be disclosed; and
    2. the right of the resident to have access to and obtain copies of the resident's health records and other information about the resident that is maintained by the provider.
  - The notice requirements of this subdivision are satisfied if the notice is included with the notice and copy of the resident and resident bill of rights under section [144.652](#) or if it is displayed prominently in the provider's place of business. The commissioner of health shall develop the notice required in this subdivision and publish it in the State Register.
  - Copies of health records to residents:
  - Except as provided in section [144.296](#), upon a resident's written request, a provider, at a reasonable cost to the resident, shall furnish to the resident within 30 calendar days of receiving a written request for medical records:
    1. copies of the resident's health record, including but not limited to laboratory reports, x-rays, prescriptions, and other technical information used in assessing the resident's health conditions; or
    2. the pertinent portion of the record relating to a condition specified by the resident.
  - With the consent of the resident, the provider may instead furnish only a summary of the record. The provider may exclude from the health record written speculations about the resident's health condition, except that all information necessary for the resident's informed consent must be provided.
  - Cost:
    1. When a resident or legal representative requests viewing the resident's record for purposes of reviewing current medical care, the provider must not charge a fee.

2. When a provider or its representative makes copies of resident records upon a resident's request under this section, the provider or its representative may charge the resident or the resident's representative no more than 75 cents per page, plus \$10 for time spent retrieving and copying the records, unless other law or a rule or contract provide for a lower maximum charge. This limitation does not apply to x-rays. The provider may charge a resident no more than the actual cost of reproducing x-rays, plus no more than \$10 for the time spent retrieving and copying the x-rays.
  3. The respective maximum charges of 75 cents per page and \$10 for time provided in this subdivision are in effect for calendar year 1992 and may be adjusted annually each calendar year as provided in this subdivision. The permissible maximum charges shall change each year by an amount that reflects the change, as compared to the previous year, in the Consumer Price Index for all Urban Consumers, Minneapolis-St. Paul (CPI-U), published by the Department of Labor.
  4. A provider or its representative may charge the \$10 retrieval fee, but must not charge a per page fee to provide copies of records requested by a resident or the resident's authorized representative if the request for copies of records is for purposes of appealing a denial of Social Security disability income or Social Security disability benefits under title II or title XVI of the Social Security Act; except that no fee shall be charged to a person who is receiving public assistance, who is represented by an attorney on behalf of a civil legal services program or a volunteer attorney program based on indigency. For the purpose of further appeals, a resident may receive no more than two medical record updates without charge, but only for medical record information previously not provided. For purposes of this paragraph, a resident's authorized representative does not include units of state government engaged in the adjudication of Social Security disability claims.
- Withholding health records from resident:
    1. If a provider, as defined in section [144.291, subdivision 2](#), paragraph (i), clause (1), reasonably determines that the information is detrimental to the physical or mental health of the resident, or is likely to cause the resident to inflict self harm, or to harm another, the provider may withhold the information from the resident and may supply the information to an appropriate third party or to another provider, as defined in section [144.291, subdivision 2](#), paragraph (i), clause (1). The other provider or third party may release the information to the resident.

#### J. Case Manager Access to Private Data

A person's case manager have access to the records of resident with a signed release.

#### K. Requesting Information from Other Licensed Caregivers or Primary Health Care Providers.

1. Complete the attached release of information authorization form.
2. Clearly identify the recipient of information. If information is to be sent to the program's health care consultant or other staff at the program, include Attention: (name of person to receive the information), and the name and address of the program.
3. Assure informed consent to share the requested private data with the person or entity has been obtained from the person or the legal representative.

4. Keep the document in the person's record.

L. Records will be kept for at least five years following termination of services.

**REFERENCED POLICIES**

HIPAA

**REFERENCED FORMS**

Authorization for Release of Information

Access to Health Records Notice of Rights